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25006 7590 08/14/2009 GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			EXAMINER FELTEN, DANIEL S	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID STEVANOVSKI
and ED CANTRELL

Appeal 2009-003024
Application 09/614,109
Technology Center 3600

Decided: August 14, 2009

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 19-37 and 39 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF THE DECISION

We AFFIRM-IN-PART.

THE INVENTION

The Appellants' claimed invention is directed a payment administration system providing real-time notification of transactions and customer selected parameters for transactions. The payment system permits the customer to set purchase parameters to limit the type of purchases, the category of merchants or creditors with which the account may be used, the time of day, who can use the account, the amounts of the purchases, and payment options (Spec. 2:18- 3:15). Claim 23, reproduced below, is representative of the subject matter of appeal.

23. An administration apparatus for directing payments for financial obligations of a customer that is a consumer of goods or services, the apparatus comprising:

an administrator having a database and an administrative program, the database including a customer file, the customer file including a purchase parameter, the purchase parameter being predetermined by the customer, the administrative program including a merchant approval program and a collection program, the merchant approval program being operable to query the customer file in response to approval request.

THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Peirce	US 4,485,300	Nov. 27, 1984
Lawlor	US 5,220,501	Jun. 15, 1993
Fleming	US 5,953,710	Sep. 14, 1999

The following rejections are before us for review:

1. Claims 19-37 and 39 are rejected under 35 U.S.C. § 103(a) as unpatentable over Peirce, Lawlor, and Fleming.

THE ISSUE

At issue is whether the Appellants have shown that the Examiner erred in making the aforementioned rejections.

With regards to claims 19-26, 28-35, 37 and 39 this issue turns on whether it would have been obvious to combine the references of Peirce, Lawlor and Fleming to have “the purchase parameter being predefined by the customer” in a credit card system.

With regards to claims 27 and 36 this issue turns on whether Peirce discloses a purchase parameter for “a customer dollar limit for all purchases within a predetermined period of time”.

FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:¹

FF1. Peirce discloses a loss control system where the issuer of a credit card can regulate the type of authorization requests transmitted from a merchant. A data control center only forwards authorization requests if they fall within parameters set by the issuer of the credit card (Abstract).

FF2. Peirce discloses that the parameters for the credit card are set by the issuer (Col. 8:31-36).

FF3. Peirce in Col. 3 does not disclose a customer dollar limit for all purchases within a predetermined period of time.

FF4. Fleming discloses a children's credit card system that allows someone other than the card issuer to set a limit on the number of expenditures that can be made. A parent may change the child's available credit line on the card (Abstract).

FF5. Fleming discloses that the child's account may be linked to the parents account and that the child's purchase may be included in the parent's statement (Col. 3:11-:24).

FF6. Fleming discloses that the parents may make changes to the child's available credit line and to the number of purchases (Col. 3:11-24).

FF7. Lawlor discloses method of remote delivery of banking services (Title).

¹ See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In *KSR*, the Supreme Court emphasized “the need for caution in granting a patent based on the combination of elements found in the prior art,” *id.* at 415-16, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248.” *KSR*, 550 U.S. at 415, (citing *Graham*, 383 U.S. at 12), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. The Court also stated “[i]f a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Id.* at 417. The

operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.*

The Court noted that “[t]o facilitate review, this analysis should be made explicit.” *Id.* at 418 (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”) However, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.*

ANALYSIS

Claims 19-26, 28-35, 37 and 39

The Appellants argue that the rejection of claim 23 is improper because Peirce and Fleming have been combined with hindsight (Br. 8, Reply Br. 1-2). The Appellants argue that Peirce is directed to the needs of credit card issuers, not consumers and that the references would not have been combined. The Appellants also argue that claim 23 includes a limitation for an administrative program including a merchant approval program and collection program that is not shown in the references (Br. 9).

In contrast the Examiner has determined that the references of Peirce, Fleming and Lawlor have been properly combined (Ans. 5-8). The Examiner has determined that in Peirce the issuer can set spending parameters to prevent fraudulent transactions and that in Fleming the parents

can set up charge card parameters to protect a child from overcharging the accounts (Ans. 6-7). The Examiner has found that it would have been obvious to modify Peirce with Fleming's predefined parent purchase parameters to protect the credit card issuer and parent against over expenditure and fraudulent use (Ans. 7).

We agree with the Examiner. In *KSR*, the Supreme Court rejected the Federal Circuit's rigid application of its teaching, suggestion, motivation test in favor of an expansive and flexible approach. *Id.*, 550 U.S. at 415. The Supreme Court noted that often, it will be necessary "to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *Id.*, 550 U.S. at 418. The Supreme Court noted that the Court of Customs and Patent Appeals "captured a helpful insight" when it first established the teaching, suggestion, motivation test, but made clear that "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.*, 550 U.S. at 418. Here, Peirce is directed to a conventional credit card system in which parameters for the credit card are set by the credit card issuer (FF1, FF2). Fleming discloses that parents may make changes to both the child's available credit line and to the number of purchases made (FF4, FF6) which serves to change the parameter of the credit card. One of ordinary skill in the art would have seen the advantage that Fleming's system provided to

allow the parent more control of a child's credit card usage. Peirce and Fleming are both directed to a credit card system in which parameters for use, such as an available credit line, may be predefined to control use of the card. The modification of the credit card systems of Peirce and Lawler to have the credit card customer predefine a purchase parameter as taught by Fleming would have been an obvious expedient to give the card holder more control of its use if a child was linked to the credit card in the system by a parent. Note that claim 23 does not exclude the parent from being considered the customer in the claim if the parent obtains a card for a child but is liable for the charges. Claim 23 also requires a "merchant approval program and a collection program" which would be present in Peirce, Fleming, or any credit card system in which approval of the credit card purchase conventionally takes place and then payment is received in some collection or payment system. For these reasons, the rejection of claim 23 is sustained.

With regards to claims 19, 20, 22, and 32 the Appellants have argued that the references fail to address the function of notifying a customer when activity has taken place on the customers account (Br. 9). The notification of a customer when an item has been charged would occur in the billing statement of a credit card customer in the system Fleming (FF5) and accordingly the rejection of the claims is sustained.

With regards to claims 26 and 35 the Appellants argue that the rejection is improper because the claims include a limitation for a customer dollar limit threshold for a purchase (Br. 8-9). Peirce and Fleming have both disclosed placing limits on credit card purchases (FF2, FF4). Thus, the

upper limit of the credit card serves as a “dollar limit threshold for a purchase”. For these reasons, the rejection of the claims 26 and 35 is sustained.

Claims 27 and 36

The Appellants also argue that the rejection of claims 27 and 36 is improper because the claims include a limitation for limit threshold for purchases within a predetermined amount of time (Br. 8-9).

The Examiner has determined that the disputed claim limitations are found in the Peirce at Col. 3 (Ans. 5).

We agree with the Appellants. Claims 27 and 36 specifically require that “the purchase parameter comprises a customer dollar limit threshold for all purchases within a predetermined period of time.” Peirce in Col. 3 does not disclose a customer dollar limit for all purchases within a predetermined period of time (FF3) as asserted by the Examiner. For these reasons the rejection of claims 27 and 36 is not sustained.

CONCLUSIONS OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 19-26, 28-35, 37 and 39 under 35 U.S.C. § 103(a) as unpatentable over Peirce, Lawlor, and Fleming.

We conclude that Appellants have shown that the Examiner erred in rejecting claims 27 and 36 under 35 U.S.C. § 103(a) as unpatentable over Peirce, Lawlor, and Fleming.

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DECISION

The Examiner's rejection of claims 19-26, 28-35, and 37 and 39 is sustained. The Examiner's rejection of claims 27 and 36 is reversed.

AFFIRMED-IN-PART

JRG

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